

APPEAL NO. 010493

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 6, 2001. The hearing officer determined that appellant (claimant) did not sustain a compensable injury to her neck in addition to the injury to her back on _____. Claimant appealed on sufficiency grounds. Respondent (carrier) responded that the Appeals Panel should affirm the decision and order.

DECISION

Claimant's appeal was not timely filed, so it did not invoke the jurisdiction of the Appeals Panel. Therefore, the hearing officer's decision and order have become final pursuant to Section 410.169.

Records of the Texas Workers' Compensation Commission (Commission) show that the hearing officer's decision was mailed to claimant on Wednesday, February 14, 2001, with a cover letter dated that same date. Claimant's request for review does not indicate when she received the hearing officer's decision and order. The request for review states that claimant's attorney received the decision and order on February 17, 2001. Claimant also states that her request for review was mailed to the Appeals Panel on March 1, 2001; but that it was returned to claimant's attorney on March 22, 2001, apparently for insufficient postage. Claimant's attorney then sent a copy of the request for review to the Appeals Panel by facsimile transmission, which was received by the Appeals Panel on March 22, 2001. Another copy of claimant's request for review was forwarded by carrier to the Appeals Panel, and was received on March 8, 2001.

Under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)), claimant is deemed to have received the decision and order five days after the date it was mailed, or on Monday, February 19, 2001. A request for review is timely if it is mailed on or before the 15th day after the date of receipt of the hearing officer's decision and if it is received by the Commission not later than the 20th day after the date of receipt of the decision. Rule 143.3(c). In this instance, the 15th day after the deemed date of receipt was Tuesday, March 6, 2001. A postmarked envelope indicates that claimant's request for review was mailed to the Appeals Panel on March 1, 2000, but that appeal was not received by the Appeals Panel because it was returned for more postage. There is nothing to show that claimant remailed the appeal to the Appeals Panel on or before Tuesday, March 6, 2001. The copy of the appeal mailed to the Appeals Panel on March 1, 2001, clearly was not received within 20 days, or by Monday, March 12, 2001.¹ The copy of the appeal that was faxed to the Appeals Panel on March 22, 2001, was sent after the 15th day following the deemed date of receipt of the hearing officer's decision. Although carrier sent a copy of the appeal to the Appeals Panel on March 8, 2001, this was not an appeal timely mailed by a party within the 15-day period. Therefore, claimant's appeal is untimely.

¹The 20th day fell on a Sunday, so the appeal must have been received by the following Monday.

Because claimant did not timely file her request for review, the request for review did not properly invoke the Appeals Panel's jurisdiction. The hearing officer's decision and order became final pursuant to Section 410.169 and Rule 142.16(f).

Judy L. S. Barnes
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Michael B. McShane
Appeals Judge